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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,)	No. CR 04-0227 MHP
13 Plaintiff,)	
14 v.)	PLEA AGREEMENT
15 JOHNNIE LAURIDSEN NIELSEN,)	
16 Defendant.)	
17)	

18 I, Johnnie Lauridsen Nielsen, and the United States Attorney's Office for the Northern
19 District of California (hereafter "the government") enter into this written plea agreement (the
20 "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of
21 Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to the above-captioned Information charging me with
24 destroying, altering, and concealing a document and tangible object with the intent to impede
25 and obstruct a federal investigation, in violation of 18 U.S.C. §1519.

26 2. I agree that the elements of a violation of 18 U.S.C. § 1519 are: (1) that I
27 knowingly altered, destroyed, mutilated, concealed, covered up, falsified or made a false
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1 entry in a record, document, or tangible object, and (2) that I did so with the intent to impede,
2 obstruct, or influence the investigation or proper administration of any matter within the
3 jurisdiction of a department or agency of the United States, or in relation to or contemplation
4 of such matter.

5 3. I agree that the maximum penalties of the charge are as follow:

- | | | | |
|---|----|---------------------------------|-----------|
| 6 | a. | Maximum prison sentence | 20 years |
| 7 | b. | Maximum fine | \$250,000 |
| 8 | c. | Maximum supervised release term | 3 years |
| 9 | d. | Mandatory special assessment | \$100 |

10 4. I agree that I am guilty of the offense to which I will plead guilty, and I agree
11 that the following facts are true:

12 a. On May 25, 2004, the United States Coast Guard (“USCG”) boarded the M/V
13 Jane Maersk in waters located in the Northern District of California to conduct an inspection
14 pursuant to its official duties, including enforcement of the International Convention for the
15 Prevention of Pollution from Ships, as modified by the Protocol of 1978 (the “MARPOL
16 Protocol”), the Act to Prevent Pollution from Ships (“APPS”), regulations promulgated under
17 APPS, and other applicable federal environmental statutes.

18 b. A sounding book is a log that was kept by the M/V Jane Maersk to accurately
19 record the measurements of certain tanks, including those containing oil. On May 24, 2004,
20 in anticipation of an upcoming inspection, I took steps to ensure that the most recent
21 sounding book (herein the “current sounding book”) for the M/V Jane Maersk was secured
22 in my cabin, rather than the engine control room where it is normally maintained and where
23 it would be available to the USCG inspectors. This same day, the vessel’s Chief Engineer
24 asked me where the sounding book was located, and I confirmed that the book was in my
25 cabin.

26 c. Based on my experience working on other vessels owned and/or operated by
27 A.P. Moller Maersk A/S, I was aware of the unwritten rule of hiding the sounding book
28 during an inspection. I had hidden the sounding book on one other Maersk vessel and

1 observed other engineers do the same on other Maersk vessels.

2 d. On May 27, 2004, agents from the USCG Investigative Services (“CGIS”) and
3 the United States Environmental Protection Agency’s Criminal Investigation Division (“EPA
4 CID”) boarded the M/V Jane Maersk. I was aware at the time that they intended to conduct
5 interviews of crew members as part of their investigation.

6 e. Between on or about May 25, 2004 and May 27, 2004, before CGIS and EPA
7 CID interviewed Rafael Doria, the Third Engineer of the M/V Jane Maersk, I told Mr. Doria
8 that, if he were asked about the current sounding book, he should falsely state that the current
9 sounding book does not exist. In truth, I knew that the M/V Jane Maersk had and used a
10 current sounding book as of May 24, 2004.

11 f. Further, from May 24 through May 27, 2004, I intentionally concealed the
12 current sounding book in my private cabin and removed and destroyed relevant pages. In
13 particular, I destroyed pages containing entries of tank measurements made by Robert A.
14 Zaldivar, the Motorman of M/V Jane Maersk, up through May 24, 2004. I removed a
15 substantial number of pages from the sounding book. These pages could have revealed that
16 I had made false entries in the Oil Record Book (“ORB”) aboard the M/V Jane Maersk.
17 Specifically, I falsified the times of operation of the vessel’s incinerator for the month of
18 May 2004 and one day in late April 2004. I knew how to falsify entries because I had both
19 observed and participated in the practice of falsifying ORB entries relating to the operation
20 of incinerators on other vessels owned and/or operated by A.P. Moller – Maersk A/S that
21 were similar to the incinerator aboard the M/V Jane Maersk.

22 g. Based on the foregoing, I agree that there is a factual basis for my guilty plea.

23 5. I agree to give up all rights that I would have if I chose to proceed to trial,
24 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
25 examine government witnesses; to remain silent or testify; to move to suppress evidence or
26 raise any other Fourth or Fifth Amendment claims; to any further discovery from the
27 government; and to pursue any affirmative defenses and present evidence. I further agree
28 to waive any right to have facts that determine my offense level under the Sentencing

1 Guidelines, including facts that support any specific offense characteristic or other
2 enhancement or adjustment, alleged in an indictment and found by a jury. See Blakely v.
3 Washington, 2004 WL 1402697 (U.S. June 24, 2004). Instead, I agree that the Court will
4 find the facts that determine my sentence under the Sentencing Guidelines beyond a
5 reasonable doubt.

6 6. I agree to give up my right to appeal my conviction, the judgment, and orders
7 of the Court. I also agree to waive any right I may have to appeal my sentence. As to any
8 matter in which I am cooperating with the government pursuant to this agreement, I waive
9 any right I may have to assert the attorney-client privilege to decline to answer questions
10 relating to communications with counsel for any other defendant including a defendant acting
11 pro se, except as to communications where counsel for the other defendant was my attorney
12 of record. I also waive my right to conflict-free representation by any attorney or pro se
13 defendant where a conflict arises from that attorney's or defendant's participation in a joint
14 defense agreement to which I also was a party.

15 7. I agree not to file any collateral attack on my conviction or sentence, including
16 a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for
17 a claim that my constitutional right to the effective assistance of counsel was violated.

18 8. I agree not to ask the Court to withdraw my guilty plea at any time after it is
19 entered.

20 9. I agree that Section §2J1.2 of the Sentencing Guidelines applies to the charge
21 contained in the captioned Information, and that the Base Offense Level under U.S.S.G.
22 §2J1.2(a) is 14. I further agree that a two-level enhancement should apply under U.S.S.G.
23 § 2J1.2(b)(3) because I destroyed a substantial number of pages from the sounding book.

24 10. I agree that, regardless of any other provision in this agreement, the
25 government may and will provide to the Court and the Probation Office all information
26 relevant to the charged offenses or the sentencing decision. I also agree that the Court is not
27 bound by the Sentencing Guidelines calculations above, the Court may conclude that a higher
28 guideline range applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw

1 my guilty plea.

2 11. I agree that I will make a good faith effort to pay any fine I am ordered to pay.
3 Before or after sentencing, I will, upon request of the Court, the government, or the U.S.
4 Probation Office, provide accurate and complete financial information, submit sworn
5 statements and give depositions under oath concerning my assets and my ability to pay,
6 surrender assets I obtained as a result of my crimes, and release funds and property under my
7 control in order to pay any fine. I agree to pay the special assessment at the time of
8 sentencing.

9 12. I agree to cooperate with the U.S. Attorney's Office before and after I am
10 sentenced. My cooperation will include, but will not be limited to, the following:

- 11 a. I will respond truthfully and completely to any and all questions put to
12 me, whether in interviews, before a grand jury, in a deposition, or at any
13 trial or other proceeding;
- 14 b. I will provide all documents and other material asked for by the
15 government;
- 16 c. I will make all court appearances, waive extradition from any country
17 in which I may be found, and otherwise make myself available upon
18 request in order to testify truthfully at any grand jury, deposition, court
19 or other proceeding as requested by the government;
- 20 d. I will surrender any and all assets acquired or obtained directly or
21 indirectly as a result of my illegal conduct;
- 22 e. I will request continuances of my sentencing date, as necessary, until
23 my cooperation is completed; and
- 24 f. I will tell the government about any contacts I may have with any
25 co-defendants or subjects of investigation, or their attorneys or
26 individuals employed by their attorneys.

27 13. I agree that the government's decision whether to file a motion pursuant to
28 U.S.S.G. §5K1.1, as described in the government promises section below, is based on its sole
and exclusive decision of whether I have provided substantial assistance and that decision
will be binding on me. I understand that the government's decision whether to file such a
motion, or the extent of the departure recommended by any motion, will not depend on
whether convictions are obtained in any case. I also understand that the Court will not be

1 bound by any recommendation made by the government.

2 14. I agree not to commit or attempt to commit any crimes before sentence is
3 imposed or before I surrender to serve my sentence (if any); violate the terms of my pretrial
4 release (if any); intentionally provide false information or testimony to the Court, the
5 Probation Office, Pretrial Services, or the government; or fail to comply with any of the other
6 promises I have made in this Agreement. I agree that, if I fail to comply with any promises
7 I have made in this Agreement, then the government will be released from all of its promises,
8 including those listed in paragraphs 18 through 22, but I will not be released from my guilty
9 plea.

10 15. If I am prosecuted after failing to comply with any promises I made in this
11 Agreement, then (a) I agree that any statements I made to any law enforcement or other
12 government agency or in Court, whether or not made pursuant to the cooperation provisions
13 of this Agreement, may be used in any way; (b) I waive any and all claims under the United
14 States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the
15 Federal Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use
16 of my statements, or any leads derived from those statements; and (c) I waive any defense
17 to any prosecution that it is barred by a statute of limitations, if the limitations period has run
18 between the date of my Proffer, June 18, 2004, and the date I am indicted.

19 16. I agree that this Agreement contains all of the promises and agreements
20 between the government and me, and I will not claim otherwise in the future.

21 17. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
22 District of California only, and does not bind any other federal, state, or local agency.

23 The Government's Promises

24 18. The government agrees that it will recommend that the Base Offense Level is
25 14, pursuant to U.S.S.G. §2J1.2(a). The government further agrees that a two-level
26 enhancement should apply because the defendant destroyed a substantial number of pages
27 from the sounding book.

28 19. Based on the information now known to it, the government will not oppose a

1 downward adjustment for acceptance of responsibility under U.S.S.G. §3E1.1.

2 20. The government further agrees not to file or seek to file any additional charges
3 against the defendant relating to the defendant's conduct on the M/V Jane Maersk from May
4 24, 2004 through May 27, 2004, arising solely out of the inspection by the USCG and EPA
5 CID of the M/V Jane Maersk in the Northern District of California during that time, or
6 known to the government at the time this Agreement is signed by the parties.

7 21. The government agrees not to use any statements made by the defendant
8 pursuant to this Agreement against him, unless the defendant fails to comply with any
9 promises in this Agreement. The government may, however, tell the Court and the U.S.
10 Probation Department about the full extent of the defendant's criminal activities in
11 connection with the calculation of the Sentencing Guidelines.

12 22. If, in its sole and exclusive judgment, the government decides that the
13 defendant, as it appears to date, continues to cooperate fully and truthfully, continues to
14 provide substantial assistance to law enforcement authorities within the meaning of U.S.S.G.
15 §5K1.1, and otherwise continues to comply fully with this Agreement, it will file with the
16 Court a motion under U.S.S.G. §5K1.1 and/or 18 U.S.C. §3553 that explains the nature and
17 extent of defendant's cooperation and recommends a downward departure.

18 The Defendant's Affirmations

19 23. I confirm that I have had adequate time to discuss this case, the evidence, and
20 this Agreement with my attorney, and that he has provided me with all the legal advice that
21 I requested.

22 24. I confirm that while I considered signing this Agreement, and at the time I
23 signed it, I was not under the influence of any alcohol, drug, or medicine.

24 25. I confirm that my decision to enter a guilty plea is made knowing the charges
25 that have been brought against me, any possible defenses, and the benefits and possible
26 detriments of proceeding to trial. I also confirm that my decision to plead guilty is made
27 voluntarily, and no one coerced or threatened me to enter into this agreement.

28 26. I confirm that I read this entire plea agreement with, and in the presence of, my

1 attorney and that I did not require the assistance of an interpreter.

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Dated: _____

JOHNNIE LAURIDSEN NIELSEN
Defendant

KEVIN V. RYAN
United States Attorney

Dated: _____

STACEY P. GEIS
JAMES E. KELLER
Assistant United States Attorneys

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: _____

DOUGLAS SCHWARTZ
Attorney for Defendant